

## § 783.42

machinery of more than 10 horsepower, whether or not such machinery is the principal source of propulsion, is required to be numbered in conformity with the Federal Boating Act of 1958 if it uses the navigable waters of the United States, its Territories, or the District of Columbia, or is owned in a State and uses the high seas (46 U.S.C. 527(a)). The requirements and procedures of this Act are explained in detail in 46 CFR part 170.

### § 783.42 Vessels neither “documented” nor “numbered”.

An “American vessel” on which employment as a seaman is subject to the minimum wage under the provisions of section 6(b)(2) and section 13(a)(14) is not limited by the language of the Act to those vessels which are “documented” or “numbered” as described above in §§ 783.40 and 783.41. Since the term “American vessel” has traditionally been applied to regularly documented vessels (see *U.S. v. Rogers*, 27 Fed. Cas. 890; *Badger v. Entierrez*, 111 U.S. 734; 18 Op. A.G. 234 (1885); 48 Am. Jur. 40), the inclusion of numbered vessels in the statutory definition of “American vessel” would indicate that the work “includes” is used in the sense of “embracing”, as an enlargement and not as a word of limitation. The term may therefore apply to other vessels that do not fall within the illustrations given. For example, neither the documenting laws nor the numbering laws apply to vessels plying the purely internal waters of a State which do not join up with navigable waters touching on another State (19 CFR 3.5(a)(4); 33 CFR 2.10-5), but, nevertheless, the Fair Labor Standards Act does apply in those areas and it clearly would not comport with the remedial purpose of the Act to exclude from its minimum wage provisions seamen engaged in commerce or in the production of goods for commerce in those areas though the vessels are not documented or numbered. On the contrary, the legislative history shows the affirmative purpose to improve, though to a limited extent, the status of seamen (Sen. Rep. No. 145, 87th Cong., 1st sess., p. 32, 50).

## 29 CFR Ch. V (7-1-11 Edition)

### COMPUTATION OF WAGES AND HOURS

#### § 783.43 Computation of seaman’s minimum wage.

Section 6(b) requires, under paragraph (2) of the subsection, that an employee employed as a seaman on an American vessel be paid wages at not less than the rate which will provide to the employee, for the period covered by the wage payment, wages which are equal to compensation for all hours on duty in such period at the hourly rate prescribed for employees newly covered by the Act’s minimum wage requirements by reason of the 1961 Amendments (see §§ 783.23 and 783.26). Although the Act takes the workweek as the unit of time to be used in determining compliance with the minimum wage of overtime requirements and in applying the exemptions, Congress, in recognition of the unique working conditions of seamen and of the customs in the industry, made this special provision. Under section 6(b)(2) periods other than a workweek may be used, in accordance with established customs in the industry, as the basis for calculating wages for covered seamen provided the wages equal the compensation at the applicable minimum hourly rate which would be due to the employee for his hours actually spent on duty in the period. This would mean that the wage period may properly cover, for example, the period of a month or of a voyage so long as the seaman receives at the appropriate time compensation at least equal to the prescribed minimum rate for each compensable hour in that pay period. (See also § 531.26 of this chapter concerning requirements of other laws governing calculation of wages and frequency and manner of payment.) To illustrate, where seamen have customarily been paid monthly under an arrangement to perform seamen’s duties during stipulated periods and to be off duty during stipulated periods during the month, if such a seaman works 300 hours during the month and receives his monthly compensation in an amount equal to a payment for that number of hours at the applicable minimum rate, there would be compliance with the requirements of section 6(b)(2). The fact that this seaman